

GENERAL FORM OF AGREEMENT*

AGREEMENT BY AND BETWEEN

THE TOWN OF STONEHAM

And

for

REFUSE AND RECYCLING SERVICES

* Further requirements and specifications based on the proposal of successful Proposer as accepted by the Town will be included in the final Agreement, including matters relating to refuse collection and disposal, recycling, the location of the subject facilities, educational services by the Contractor, and service requirements by the Contractor. Additionally, requirements set out in the RFP, including, but not limited to the provisions and requirements contained in Part I of said RFP, to which this Agreement is attached and incorporated, shall also be included and incorporated into the final Agreement. The Town has the right to make all final determination regarding the final Agreement form and language not otherwise in conflict with the RFP or applicable law.

This Solid Waste Collection, Recycling and Transportation Agreement, dated June ____, 2014, by and between _____. (hereinafter "Contractor"), a corporation duly organized and existing under the laws of the Commonwealth of Massachusetts and the Town of Stoneham (hereinafter the "Town") a municipal corporation of the Commonwealth of Massachusetts and located in Middlesex County.

WHEREAS, the Town is desirous of contracting for solid waste collection, recycling and transportation and is authorized to enter into contracts to carry out such responsibility; and

WHEREAS, Contractor is in the business of the provision of solid waste collection, recycling and transportation, and has demonstrated its ability to provide quality service; and

WHEREAS, both parties are desirous of entering into an Agreement upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and covenants herein contained, and for good and valuable consideration the receipt and adequacy of which is hereby acknowledged, the parties hereto do hereby promise and agree as follows:

1. **Definitions**

- a. **Acceptable Waste(s)** - hereinafter also referred to as "waste" or "wastes" (and regardless of whether or not capitalized), shall mean all solid waste which can be placed in containers not to exceed fifty (50) pounds, nor the aggregate limit set by the Town or with respect to residential condominiums served, into dumpsters, excluding, however, inherently dangerous, toxic and hazardous wastes which shall from time to time be designated as "hazardous wastes" or materials which are banned by Federal, State or Local regulatory authorities having appropriate jurisdiction. Specifically excluded from acceptable wastes shall be:
- Glass containers and metal containers to the extent prohibited by law from being disposed of with the Town's regular waste.
 - White goods.
 - Demolition debris.
 - In whole or in part, any of the following: auto hulks, engine blocks, transmission blocks, heavy machinery, skimobiles, motorcycles, riding type lawn mowers, tractors, chain link fencing, metal tanks.
 - Leaves, yard waste, grass clippings.
 - Stumps, limbs or branches - regardless of size.
 - Pathological wastes.
 - Toxic and volatile chemicals.
 - Explosives.
 - Televisions, computers and other CRTs
 - Hazardous materials
 - Gasoline and waste oil containers
 - Paint turpentine, paint thinners, and shellac containers
 - Oven and drain cleaners, heavy-duty cleaners, and pool chemicals
 - Pesticide containers

- Batteries
- Explosives
- Propane tanks and gas cylinders
- PCBs and radioactive waste containers
- Other DEP or EPA designated materials
- Tires
- Demolition debris
- Other item(s) or material(s) designated in writing by the Town.

b. Transport or Transportation - shall mean to carry acceptable waste(s) in an approved and lawful vehicle from the point of collection or pickup to the Covanta Haverhill Associates disposal site, Haverhill, Massachusetts, or, if determined by the Town, an alternate location within a twenty mile (20) mile radius of Stoneham Square, and shall mean to carry recyclables to the appropriate recycling site.

c. Ton - shall mean short ton of two thousand (2,000) pounds.

d. Work or Services - All performance, including the furnishing of materials, labor, tools, equipment and incidentals, required of the Contractor under the terms of the Contract.

e. Workday - shall mean any calendar day on which the Contractor is obligated to perform any service pursuant to this Agreement.

f. Collection Day's Rate - shall mean the schedule waste collection pattern for any particular calendar day, provided said schedule has been predetermined by the Contractor and approved by the Director of Public Works in accordance with the terms and conditions of these specifications.

g. Legal Holidays – shall mean New Year’s Day, Martin Luther King Day, President’s Day, Patriot’s Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran’s day, Thanksgiving Day, Christmas Day and such other legal holidays added to this definition by the Town.

h. Refuse (Acceptable Waste) – shall mean all garbage, rubbish and trash and other items that are acceptable waste(s). See “Acceptable Waste”

i. Town - shall mean the Town of Stoneham, the municipal corporation and shall include all streets and ways and all buildings and improvements, as set forth on an official map on file in the office of the Town Clerk.

- j. **Singular / plural** - except as otherwise specifically provided in this Agreement, the plural shall include the singular and the singular shall include the plural.
- k. **Municipal waste** - shall mean all "Acceptable Wastes", including food wastes provided by the Town for collection and transportation by Contractor.
- l. **Board of Health** - shall mean the Board of Health of the Town of Stoneham.
- m. **Town Administrator** - shall mean the Town Administrator of the Town of Stoneham
- n. **Director of Public Works** - shall mean the Director of Public Works of the Town of Stoneham or his successor in title as Department Head for the Department of Public Works.
- o. **Police Department** - shall mean the Police Department of the Town of Stoneham.
- p. **Ton** - shall mean short ton of two thousand (2,000) pounds.
- q. **Workday** - shall mean any calendar day on which the Contractor is obligated to perform any service pursuant to this Agreement.
- r. **Collection Day's Rate** - shall mean the schedule waste collection pattern for any particular calendar day, provided said schedule has been predetermined by the Contractor and approved by the Director of Public Works in accordance with the terms and conditions of these specifications.

2. **Term**

The Contract (Agreement) which shall be subject to annual appropriation by the Town, begins on June 30, 2014 (the "Commencement Date"), and unless earlier terminated as provided in this Agreement, shall continue in force and effect for three (3) years and one day (June 30, 2014 - June 30, 2017). There shall then be one two (2) year (less two days) option period (July 1, 2017 - June 28, 2019.) The option period shall be at the Town's sole discretion as to whether to exercise the option, and no exercise of the option period shall be subject to agreement or acceptance by the Contractor. Specific notice provisions regarding the option period are as follows: the Town, by and through its Town Administrator should give the Contractor a minimum of ninety (90) days' prior written notice as to whether it will exercising said Option Period. If the Town does not provide said written notice or the Contractor does not, for any reason, receive said written notice, the Contractor shall provide written notice to the Town that such notice regarding the Option Period has not been received by the Contractor. Upon receipt of said written

notice by the Contractor regarding the lack of such notice regarding the Option Period, the Town shall by and through its Town Administrator, provide the Contractor with notice of the Town's intent with respect to the Option Period.

3. Collection Generally/Miscellaneous New services

a. Generally

The Contractor shall collect weekly for disposal all Acceptable Waste from all residential structures and buildings, including designated residential condominiums (hereinafter referred to as "condominiums"), but not including rental apartment houses where the number of apartments exceeds six (6). The Contractor shall also collect from municipal buildings, including the Town Hall, Police Station, Public Works Yard, Unicorn Recreation Area, Par 3 Golf Course, Fire Station, Library, Elderly Housing (Housing Authority), Schools and Senior Center. No collection of commercial waste shall occur. The Contractor shall not collect any waste other than Acceptable Waste. Collections shall be made from all designated addresses, buildings and facilities in the Town whether on private, public, accepted or unaccepted streets. Waste shall be picked up curbside, however waste from condominiums of six (6) or more dwelling units shall have waste picked up from dumpsters unless otherwise authorized by the Town. The barrels in the downtown area shall be emptied on Mondays, Wednesdays, and Fridays as needed. Municipally owned barrels on other Town streets and in Town parks shall be emptied as needed, but not less than once per week.

b. Assessment/Site Visits

The Contractor shall perform a complete assessment of needs with respect to waste collection from condominiums, including site visits.

c. Recycling Bins - Condominiums

The Contractor shall offer recycling bins to condominiums at the following rates:

<u>Size</u>	<u>Monthly Bin Charge</u>	<u>Sale Price</u>	<u>Charge for each additional pick-up per cart</u>
65 gallon	\$5.00	\$ 86.00	\$7.00
96 gallon	\$7.00	\$100.00	\$7.00

d. Containers - Condominiums

The Contractor shall offer containers (for acceptable waste) to condominiums at the following rates:

<u>Size</u>	<u>Monthly Container Charge</u>	<u>Charge for each additional pickup per container</u>
10 yarder	\$36.00	\$25.00
8 yarder	\$30.00	\$23.00
6 yarder	\$26.00	\$20.00
4 yarder	\$20.00	\$15.00
2 yarder	\$20.00	\$15.00

Any loose trash will be collected at \$5.00 per yard. Loose trash is defined as trash around the container or curbside.

e. Condominium Information

The Contractor shall provide the Town annually during the week of July 15th, a list of all condominiums that are being collected pursuant to this Agreement, including the number and size of each dumpster, the number and size of each recycling bin and whether or not the condominium receives additional collections above the standard number of collections.

4. Collection Routes

The Contractor shall collect according to collection routes approved by the Director of Public Works. Any initial changes therefrom shall be approved by the Director of Public Works. Any changes in collection routes thereafter must also be approved by the Director of Public Works prior to the implementation of such change. If the day for collection is changed for any party served by this Agreement, the Contractor shall issue and deliver, or at the Town's option, the Town shall issue and deliver, at the Contractor's expense, notice of collection route modifications to all parties so affected. This notice shall be delivered by mail or in hand no later than fourteen (14) days before the new collection day is implemented and shall include the Contractor's telephone number for complaints and the date the new collection day takes effect. The Contractor shall also advertise the collection route modification in a local newspaper of general circulation at least once in each of two successive weeks

prior to the effective date of the collection route modification. The newspaper advertisement shall contain the same information as the notice described above.

5. Collection Schedule

The schedule shall normally be a five-day-per-week operation. The Contractor shall collect waste at least once per week except as otherwise provided in Paragraph 6, below. In the case of a holiday, the collection designated for that day shall be made the following day and subsequent collection routes of that week shall be made one day later than usual. The Contractor shall be required to insert an advertisement in the local newspaper prior to all legal holidays informing the public when their regular scheduled collection will be made as well as subsequent routes affected by the holiday, said advertisement shall be at least two (2) columns wide and two (2) inches long, published prominently.

6. Municipal Container Location and Pick-Up Schedule

<u>Location</u>	<u># of Containers</u>	<u>Size</u>	<u>Pick-Up Schedule</u>
Public Works Yard	2	10 yds.	When called
Public Works Yard	2	4 yds.	1 per week
Town Hall	1	6 yds.	1 per week
Police Dept.	1	4 yds.	1 per week
Central School	1	10 yds.	3 per week
North School	1	6 yds.	1 per week
Robin Hood School	1	6 yds.	1 per week
South School	1	6 yds.	1 per week
Colonial Park School	1	6 yds.	1 per week
Middle High School	1	10 yds.	5 per week
Senior High School	1	10 yds.	5 per week
Unicorn Golf Course	1	6 yds.	1 per week
Par 3 Golf Course	1	4 yds.	1 per week
Unicorn Arena	1	6 yds.	1 per week
Council on Aging	1	10 yds.	1 per week

The municipal locations and schedule set out herein may be amended by the Town as circumstances require. In addition to these locations, the Contractor shall be required to empty the municipally owned barrels on Town streets and in Town parks as needed, but not less than once per week. The barrels in the downtown area shall be emptied on Mondays, Wednesdays, and Fridays as needed.

7. Collection Not Required

The Contractor shall not be required to:

- a. remove waste from containers which are frozen to the extent that the attempt to remove may cause damage to the container or cover.
- b. pick up any container in excess of fifty pounds (50 lbs.). (This exclusion shall not include dumpsters.)
- c. make collections from inside any buildings.
- d. collect waste if said waste or access to said waste is not reasonably safe and clear.

8. Collection Times

Refuse shall be placed at the curb no later than 7:00 A.M. of the day of collection, and the Contractor shall not commence collections earlier; Residents shall be informed by the Town that refuse that is to be placed at the curb, shall be placed there no later than 7:00 A.M. The Contractor shall make every reasonable effort to complete all daily routes by 4:00 P.M. and shall in no event collect beyond 7:00 p.m.

9. Trucks and Containers - Required

The Contractor shall use a containerized system equipped with automatic rear loaders and packers or reasonably comparable equipment subject to the Town's approval, according to the size and pick-up requirements required by this Agreement. All trucks shall have enclosed packer type bodies designed to prevent spillage.

The Contractor shall use a sufficient number of trucks and necessary equipment, including reserve equipment in the case of a breakdown of trucks and/or equipment, so that there shall be no unnecessary or unreasonable delay in the Collection or Transport of waste in accordance with this

Agreement. All equipment used during the term of this Agreement shall not exceed five (5) years of age. The Town shall have the right to require the Contractor provide additional trucks as needed to provide adequate and timely collection and transport in accordance with the requirements of this Agreement. All vehicles used by the Contractor shall be equipped with functioning two-way radios or other two-way communication equipment acceptable to the Town. One broom and one shovel shall be standard equipment on each vehicle to clean up any spillage which may occur during the loading and transporting of waste.

10. Trucks and Equipment - Conditions

The Contractor shall continually maintain the trucks and equipment so that they will be in good working order and clean and sanitary condition all times. Determination of the acceptability of condition shall be in the judgment of the Director of Public Works and the Board of Health and their determination shall be final and binding.

11. Ownership and Responsibility For Trucks and Equipment

All trucks and equipment provided by the Contractor for this Agreement shall remain the Contractor's property for which the Contractor shall be solely responsible.

12. Truck Identification

All trucks employed by the Contractor in the performance of this Agreement, whether collecting or transporting waste, shall have affixed thereto so as to be readable, identification stating "In Service To Town of Stoneham" or such other wording approved by the Director of Public Works. The form and specifics of such identification and method of affixing to the trucks shall be approved by the Director of Public Works. The Contractor shall inform the Department of Public Works which trucks are being used each day for collection and transportation by 8:00 A.M. of each collection day. In the event the Contractor elects to use a vehicle identified as in service pursuant to this Agreement for any purpose other than the collection and transportation of waste as provided in this Agreement, the Contractor shall give notice of the proposed use to the Director of Public Works prior to such use and must receive permission from the Director, which permission may be withheld by the Director at his sole discretion.

Any such vehicle which has provided collection services to any entity other than the Town shall be emptied and cleaned by the Contractor and shall be subject to inspection by the Town prior to the use of such vehicle to collect waste pursuant to this Agreement. Any vehicle marked as required herein shall have such identification covered at all times when providing services to any entity other than the Town.

The Contractor shall furnish the Director of Public Works with a list of all vehicles, including the make, body type, and registration for each vehicle prior to its use and shall notify the Director of Public Works when a vehicle is no longer in service to the Town. The Contractor shall affix the identifying information required in this Paragraph to any vehicle, including substitute vehicles, prior to using such vehicle to provide service pursuant to this Agreement.

13. Truck Inspection

The Contractor shall present any and all vehicles and other equipment used pursuant to this Agreement for inspection and approval by the Director of Public Works or his/her designee(s) at such times and places as the Director of Public Works may reasonably request.

14. Collection Procedures

a. **Doors and Openings** - The doors and other openings of vehicles shall remain closed between stops.

b. **Care of Property** - In emptying refuse barrels, the Contractor shall not drop barrels or covers or take any other action which would cause damage to them. Barrels and covers shall not be placed on traveled ways, sidewalks or other places which would interfere with motor vehicle or pedestrian traffic, but shall be placed at least two feet (2') off the traveled way. No scavenging shall be performed or permitted by the Contractor and all waste dropped in handling shall be picked up. The packing unit of the collection body will be frequently operated to prevent waste from being deposited or blown from the collection hopper onto the ground.

c. **Replacement of Property** - If, in the Town's judgment, a barrel is damaged or destroyed by the Contractor's personnel, the Contractor shall at its expense promptly replace the damaged or destroyed barrel.

d. **Damaged Property** - Any damage done to private property by Contractor's personnel shall be promptly repaired or paid for by the Contractor after consultation with the private party involved. Any damage to Town property shall also be promptly repaired or paid for by the Contractor after consultation with the Town or may be repaired by the Town and the cost thereof deducted from any monthly payment.

e. **Emptying Trucks** - No truck shall be emptied, partially emptied or load transferred in any street or other place in the Town without prior approval on a case-by-case basis by the Director of Public Works.

f. **Collection Not Required** - If, in the opinion of the Contractor or one of his employees, the waste of a particular house should not be collected because of a violation of the conditions of collection as set forth in this Agreement, a tag shall be attached by the Contractor to the container stating the reasons therefore, and the Contractor shall immediately report this fact to the Public Works Office.

g. **Town Waste Only** - All wastes collected pursuant to these specifications shall be collected by vehicles which shall be empty and devoid of all wastes prior to the commencement of a collection day route. No out-of-Town waste, commercial waste or any other waste not subject to this Agreement shall be mixed with Town waste collected pursuant to this Agreement. For each occurrence of waste being collected by the Contractor in violation of this Agreement, the Town may impose as liquidated damages, and Contractor must pay, the sum of Ten Thousand Dollars (\$10,000.). The Contractor acknowledges and agrees that the liquidated damages provided herein is not a penalty, but rather is a fair measure of damages which will be sustained by the Town in the event of such a violation by the Contractor. The Town shall have the right to withhold the amount of liquidated damage assessed by it from any payment owed to the Contractor as a credit or set-off of such amount. The Town's failure to assess liquidated damages shall not constitute a waiver of its right to hold the Contractor in default nor does the Town waive its right to claim and collect damages for the Contractor's default.

h. **Daily Transportation** - All waste collected by the Contractor shall be transported to the designated out of town facility on the same day it is collected by the Contractor.

15. Failure To Complete Route/Substitution

In the event of a failure of the Contractor to complete the collection program for a particular day's route due to inclement weather, mechanical breakdowns or other problems, the Public Works Director may employ the services of others to complete the day's route or until such time as the problem has been resolved to the Town's satisfaction, and the expenses so incurred shall be deducted from the next payment to the Contractor.

No penalty shall be assessed if the failure to collect is for a reason beyond the Contractor's control (e.g., a blizzard); however, in such event the Contractor shall proceed to collect fully two routes per day or the penalty shall apply.

16. Telephone Complaint Line/Missed Collections

The Contractor shall make available a toll-free telephone number where complaints may be filed by the Town and parties provided services pursuant to this Agreement at all days collection takes place from 8:00 A.M. to 6:00 P.M. or one hour after collection has been completed, whichever is later. The Contractor shall contact the Department of Public Works daily before 3:30 P.M. Monday through Friday to receive any reports of missed collections or other complaints and shall complete those missed collections or remedy such complaints which can be so remedied by 7:00 P.M. of that day, unless the Town exercises its remedial provision as set out in this Agreement and instructs the Contractor to commence his next regular collection day's routes. The Contractor shall keep a written record of all complaints, a copy of which shall be provided to the Town on a monthly basis.

17. Recycling

a. Generally - The Contractor shall provide recycling collection and services as required herein, which shall include weekly recycling.

b. Recyclable Materials - Recyclables for this Agreement shall be:

- mixed papers (comprised of newspapers, inserts, magazines, catalogues, office paper, junk mail, paperboard, paperback books, phone books, brown paper bags, and corrugated cardboard (flattened), newspapers and newspaper inserts, magazines, phonebooks and cardboard no greater size than as limited by applicable law or regulation or as determined by the Town;
- tin cans and aluminum cans;
- glass bottles and jars;

- plastics (1 through 7); and
- additional items or materials required to be recycled by law or otherwise required to be recycled by the Town subject to applicable law and regulations

c. **Procuring Markets, Transportation and Pre-processing** - the Contractor shall be responsible for procuring markets for the recyclable material and for the transportation of the recyclable materials to the market sites. If required by the market(s), the Contractor shall be responsible for any pre-processing of the collected recyclable materials prior to delivery to the market.

d. **Recycling Collection Schedule** - The Contractor shall work and cooperate with the Town with regard to the recycling schedule. This schedule shall ensure that recyclables will be collected on the regularly scheduled waste collection day. Each resident's recyclables shall be collected every week. The Contractor shall collect from public schools and municipal buildings once a week.

e. **Weight Slips** - The Contractor shall be responsible for providing the Town with certified weight slips showing the weight of the recycled materials collected and disposed of at least once each month. These weight slips must be provided by the 15th of the month following the previous full month of collection.

f. **Collection Equipment** - The collection units shall be of size and type that is approved by the Town. The Contractor shall have standby equipment available within a twenty-five (25) mile radius of the Town. Equipment shall be equipped with two-way radios.

g. **Container Requirements** - The Contractor is required to collect from all standard recycling containers all newspaper or magazines placed loosely, tied with string or placed in paper bags. The Contractor will also be required to collect commingled recyclables from containers that hold recyclables only. Recycling materials from condominiums must be placed in carts or and/or bins. There will be no limits to the amount of recyclables. In the event that recyclables are not acceptable to be picked up, the Contractor shall leave a slip to the resident explaining why. The Contractor shall supply recycling containers at all municipal buildings as required (no additional charge).

h. **Care of Residents and Town Property** - The Contractor shall handle recycling containers with care so that they will not be damaged, and after they are emptied, they should be left upside down and in the approximate place where found. Covers on recycling containers shall be placed on its container. If the cover is a non-secure type, it should be placed on top of the upside down container.

When in the judgment of the Town, recycling containers belonging to residents or the Town, and used for collection of recyclables are damaged or destroyed by an employee(s) of the Contractor, such containers shall be replaced forthwith by the Contractor.

i. Stevens Street Recycling Center – Contractor Obligations

The Contractor shall supply and transport dumpsters for appliances, metals, cardboard and certain other recycling materials as may be reasonably designated by the Town, which shall include removal of Freon, and shall provide all relevant services in connection therewith, including, but not limited to:

- a. Remove Freon and supply town with a CFC certificate from a licensed Freon removal company and provide a container for all such appliances and other metals.
- b. Provide a container for rigid plastics sufficient in size to handle the rigid plastics brought to the Recycling Center. The Contractor shall collect, empty, remove and deliver as need and required by applicable law and regulations;
- c. Provide a container for cardboard and other recycalable items as may be designated by the Town sufficient in size to handle the cardboard brought to the Recycling Center.

The Contractor supplied separate roll-off containers required herewith at the location at Stevens Street designated by the Town for each of the above materials. The Contractor shall collect, empty, remove and deliver all such items and materials to a licensed and approved recycling center(s), as needed, and as may be regulated by applicable law and regulations. The removal and disposal of all such materials shall be by the Contractor at its expense and at the reasonable directions of the Town.

j. White Goods - The Contractor shall also provide to any residence receiving services provided by this Agreement curbside pick-up of white goods at a cost of no greater than \$25 per white good (\$35 per refrigerator or air conditioner) paid for and billed directly to the homeowner. Said pick-up shall be made no later than one week after requested by the resident. The Contractor shall haul the materials to a recycling facility that the Contractor shall procure that meets any applicable standards set out in law or regulation. The Contractor shall be responsible for and pay all tipping and other fees and shall receive the payments, if any, for said white goods from the recycling facility. Monthly reports shall regarding all such activity shall be submitted to the Department of Public Works.

k. **Receipts/Reports** - The Contractor shall supply receipts and a report on a monthly basis of all recycled materials collected and delivered, and such other reports as may otherwise be reasonably required by the Town or as required by applicable law or regulations. The specific format of any reports may need to be amended in order to remain consistent with federal, state and/or local regulations, requirements and/or policies. Any state, federal or local reports required shall be furnished by the Vendor in a timely and accurate manner as required.

18. Leaves, Grass Clippings, and Christmas Trees

The Contractor shall provide eight (8) curbside collections per year for leaves, grass clippings, and Christmas trees. There will be four (4) collections in the fall, one (1) collection in January for Christmas trees, and three (3) collections in the spring, with the specific dates as determined by the Town. The Contractor shall deliver all yard waste materials, whether picked up at curbside or brought to the recycling facility, to a site designated by the Town. The Town will pay the disposal fee.

19. Direction By Town/Compliance with Requirements of Disposal Contract

The Contractor shall abide by the directions of the Director of Public Works with regard to the collection and transportation of waste and recycling. All justified complaints of operation received from the Town Administrator or Director of Public Works shall be immediately rectified by the Contractor.

The Contractor shall comply to the fullest extent applicable with the all provisions applicable to the transportation and disposal of waste at the Covanta Haverhill Associates located in Haverhill, Massachusetts and contained in the Waste Disposal Agreement between the Town of Stoneham and Covanta Haverhill Associates, amended March 12, 2014, a copy of which is provided herewith and incorporated herein, including but not limited to the "Delivery Point Procedures Rules and Regulations, as amended (the current Rules and Regulations are attached hereto as Appendix B.) If at any time the Contractor is generally denied disposal privileges at the Town's disposal site or such disposal privileges are revoked by the operator of the disposal site, the Town may, in its sole discretion, immediately suspend or terminate this Agreement. Prior to final termination of this Contract by the Town, the Contractor shall be given a reasonable opportunity to obtain or re-obtain said disposal privileges if during such time the Contractor holds harmless and indemnities the Town from and against any and all

losses during such period. The provisions of Paragraph 27, Termination, are also applicable hereto with respect to the Town's rights and the obligations of the Contractor subsequent to termination, unless said provisions conflict with a provision of this Paragraph 19.

20. Staffing

A sufficient number of employees shall be employed by the Contractor to efficiently provide the services required by this Agreement. Such personnel shall not be employees of or have any contractual relationship with the Town. All of the services required hereunder shall be performed by the Contractor or under the supervision of the Contractor, and all personnel engaged in the work shall be fully qualified. The Contractor and employees, agents, servants, or other persons for whose conduct the Contractor is responsible shall not be deemed to be employees of the Town and shall not file any, claim or bring any action for any worker's compensation or unemployment benefits and compensation against the Town.

21. Contractor's Employees

a. **Competence** - The Contractor shall use its best efforts to supply sufficient personnel, including supervisory and management personnel, to perform the services required by this Agreement. Contractor's personnel shall behave courteously to all residents. Collection and transportation of waste shall be made whenever possible without disrupting or halting vehicular traffic. Contractor agrees that whenever the Town notifies the Contractor in writing that an employee of the Contractor while performing services under this Agreement is or was, or is or was alleged to be, incompetent, disorderly, under the influence of alcohol and/or drugs, uses inappropriate language to the members of the public, commits traffic violation or is otherwise unsatisfactory in any manner with regard to the services provided pursuant to this Agreement, the Contractor shall promptly investigate such complaint. If the Contractor is unable to correct the problem, the Contractor shall no longer assign such employee to perform services pursuant to this Agreement.

b. **Training and Licensing** - The Contractor warrants that all vehicle operators shall be trained in public safety, driving safety and basic first aid prior to their commencement of services hereunder, and shall at all times while performing such services possess and carry the necessary valid and applicable commercial vehicle operator's license issued by the Commonwealth of Massachusetts.

The Contractor shall use its best efforts to see that its vehicle operators comply with all applicable traffic and motor vehicle laws and regulations.

c. **Dress and Safety Equipment** - The Contractor's personnel employed pursuant to this Agreement shall be suitably dressed and clean and neat in appearance. The Contractor is responsible for providing any and all safety equipment required or needed by its employees for the provision of services pursuant to this Agreement.

d. **Employees of Town** - The Contractor shall not during the term of this Agreement hire or employ on either a full-time or part-time basis any person or persons employed by the Town.

22. Assignment

The Contractor shall not assign this Agreement nor sublet it in whole or in part, or delegate any of the work to be performed to any other party without the written permission of the Town Administrator. However, notwithstanding the permission to assign being granted by the Town, the Contractor shall continue to be the prime obligor of this Agreement.

The Contractor shall not assign any monies due, or to become due to them under this Agreement without the prior written consent of the Town Administrator. The bankruptcy of the Contractor or any assignment for the benefit of creditors shall, at the election of the Town Administrator, terminate this Agreement.

23. Costs

The Contractor specifically agrees to be responsible for all costs associated with the collection and transportation of waste collected pursuant to this Agreement and that the Town shall be responsible to the Contractor only to the amount of the Contract Price set out in in this Agreement. Any increase in costs to the Contractor, for any reason, during the contract term, shall be borne solely by the Contractor.

24. Extra Work

The Town may at any time, by a written order, and without notice to the sureties, require the performance of such extra work or changes in the work as it may find necessary or desirable. The

amount of compensation to be paid to the Contractor for any extra work, as so ordered, shall be determined as follows:

(a) By such applicable unit prices, if any, as are set forth in the Contract; or by such prices as may be agreed upon between the Town and the Contractor.

(b) If no such unit prices are set forth, or if no unit price is agreed upon between the Town and the Contractor, then by a lump sum mutually agreed upon by the Town and the Contractor, or:

(c) If no such unit prices are so set forth, or, if no unit price is agreed upon between the Town and the Contractor, and if the parties cannot agree upon a lump sum then the actual net cost in money to the Contractor of the materials and of wages of applied labor (including premiums for Worker's Compensation Insurance) required for such extra work, plus such rental for plant and equipment (other than small tools) as required and approved for such extra work, plus ten per cent (10%) as compensation for all other items of profit, and cost or expenses including administration, overhead, superintendence, insurance (other than Worker's Compensation Insurance), additional premiums upon the performance bond of the Contractor and the use of small tools. The provisions hereof shall not affect the authority and power of the Contractor to act in case of emergency as provided in the Contract.

25. Contractor's Claim

If the Contractor claims compensation for any damage sustained, he shall, within ten (10) days after the sustaining of any such damage, make a written statement to the Director of Public Works and the Town Administrator of the damages sustained and shall, on or before twenty-one (21) days of filing the above written statement, file with the Director of Public Works and the Town Administrator an itemized statement of the details and amount of such damage; and unless such statements shall be made as so required, the Contractor's claim for compensation shall be forfeited and invalid, and he shall not be entitled to payment on account of any such damage.

26. Directions By Town

The Contractor shall comply with any and all directions that may from time to time be given by the Director of Public Works regarding changes in routing, order of collections, type and care of vehicles and equipment and such matters as the Director of Public Works may deem advisable for the improvement of Refuse and Recycling Services.

27. Termination/Suspension

If the Town Administrator determines that the Contractor has failed to provide services or otherwise comply with a material provision as set forth in this Agreement or as otherwise required by applicable law or regulation, the Town Administrator may give the Contractor written notice of the Contractor's default which notice shall provide that the Town may at its sole option terminate this Agreement unless such default is corrected within seven (7) days. If the Town terminates this Agreement pursuant to the provisions herein, the Town may enter into another contract and hold the Contractor herein liable and responsible for all damage caused to the Town thereby. The proper exercise of this right of termination shall be in addition to, and not in substitution of any other lawful remedy provided by this Agreement or by law. Failure of the Town to provide such notice of termination in the event of a default, or to terminate this Agreement upon failure by the Contractor to cure such default, shall not act as a waiver of any prior or subsequent default, nor as a waiver of the right to terminate in the event of default. (See also paragraph 2, above.)

In the event that the Contractor shall be adjudged bankrupt, either by voluntary or involuntary proceedings or if the Contractor shall become insolvent or fail to meet its financial obligations then this Contract may be immediately terminated by the Town and in such case shall not be treated as an asset of the Contractor after said termination. This Agreement is not assignable either voluntarily or involuntarily or by process of law, and shall not be or come under control of creditors or a trustee(s) of the Contractor in case of bankruptcy or insolvency, but shall be subject to termination as provided herein.

The Town may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as it may determine to be appropriate for the convenience of the Town provided, however, that if there is a suspension, delay or interruption for fifteen days or more or due to a failure of the Town to act within the time specified in this contract, the Town shall make an adjustment in the contract price for any increase in the cost of performance of this contract but shall not include any profit to the Contractor on such increase, and provided further, that the Town shall not make any adjustment in the contract price under this provision for any suspensions, delay, interruption or failure to act to the extent that such is due to any cause for which this contract provides for an equitable adjustment of the contract price under any other contract provisions.

If the Town has failed to comply with a material provision of this Agreement the Contractor may give the Town (to both the Town Administrator and the Director of Public Works) written notice of the alleged Town failure to so comply. If the Town fails to either comply with said material provision or begin to address or remedy said failure within thirty (30) days of said written notice, the Contractor may terminate this Agreement pursuant to the provisions herein, subject to meeting any requirements in this Agreement for which was already responsible.

28. Performance Bond

The Contractor shall furnish and prior to the commencement of any services hereunder and maintain during the entire term of this Contract a bond or bonds in the amount of Five Hundred Thousand Dollars (\$500,000) in a form acceptable to the Town, executed by a surety company located in the United States, duly authorized to do business in the Commonwealth of Massachusetts and acceptable to the Town, as security for the faithful performance of this Agreement and as security for payment of all persons performing labor and furnishing materials and equipment in connection with this Agreement. Said bond shall be executed for no less than a one year period (unless otherwise agreed to in writing by the Town Administrator in his/her sole discretion) and shall be renewed on an annual basis ninety (90) days prior to the start of each ensuing contract year. The Town shall be provided no less than thirty (30) days written notice prior to the cancellation of any bond or any material change in the bond(s).

29. Indemnity

The Contractor agrees to defend, indemnify and hold the Town, its officials, employees and agents harmless from and against any claims (legal or equitable), damages, losses, fines and expenses, including those arising from personal injury or death or property damage and including court costs and reasonable attorney fees, arising out of or resulting from, in whole or in part: (i) any act or omission, (ii) any failure to comply with any law or regulation, or (iii) intentional misconduct - of the Contractor, its officials, employees or agents regardless of whether or not such claim, loss, damage, fine or expense was caused in part by a party indemnified hereunder. This indemnification shall not be limited in any way by any limitation on the amount and type of damages claimed or incurred. Nor shall this indemnification be limited in any way by the existence of or payment by or from any policy of insurance. With respect to the Contractor's indemnification obligation, the Town may require the Contractor to defend with counsel acceptable to the Town or in the alternative pay for counsel selected by the Town. This indemnification

shall not be construed to negate, abridge or otherwise affect any other obligation of indemnification running to the Town from the Contractor which would otherwise exist. The Contractor's indemnification obligations shall survive termination of this Agreement.

30. Insurance - Claims

The Contractor shall take out and maintain prior to the commencement of services under the Contract during the life of the contract, the following insurance in companies and forms acceptable to the Town and in adequate amounts, as shall protect the contractor, Town and Town employees, agents and officials from all claims and liability for damages and liability for damages, for bodily injury, including accidental death, and for property damage, which may arise from operations under this contract. The contractor, subcontractors, and all insures waive all rights of subrogation and agree to hold the Town and its employees, agents and officials harmless from loss or damage due to claims for personal injury (including death) and/or property damage arising from, in connection with operations under this contract. Except as otherwise stated, the amounts of such insurance shall be for each policy annual policy. The insurance coverage provided shall not be for less than the following amounts and must comply with all laws and regulations of the federal, state and local laws and regulations:

- a. Commercial General Liability Insurance including: Bodily Injury and Broad Form Property Damage, including completed operations, Personal Injury and Advertising Injury (with employment exclusion deleted), Premises and Operations, General Aggregate, Independent Contractors, Products and Completed Operations, Contractual Liability and Medical Payments.

Limits of Liability shall be no less than:

i.	Bodily injury and Broad Form Property Damage including Premises & Operations - each occurrence	\$1,000,000
ii.	Personal Injury and other Injury - each occurrence	\$1,000,000
iii.	Premise & Operations - each occurrence	\$1,000,000
iv.	General (Annual) Aggregate	\$2,000,000
v.	Products and Completed Operations – Aggregate	\$2,000,000
vi.	Medical Payments – per person	\$5,000

Coverage shall specifically include blanket contractual liability covering Contractor's indemnity obligations as contained in this Agreement and coverage for independent contractors. Products and Completed Operations insurance shall be maintained until the end of the applicable statute of limitations.

- b. Comprehensive Automobile (Motor Vehicle) Liability covering all vehicle used by Contractor in the course of this work; including coverage for owned, non-owned and hired vehicles.
 - i. Bodily injury including accidental death - each person \$1,000,000
 - ii. Bodily injury including accidental death - each occurrence \$2,000,000
 - iii. Property damage - each occurrence \$1,000,000
 - iv. Property damage - aggregate during any 12 months \$2,000,000

Or in the alternative a Combined Single Limit of Three Million Dollars (\$3,000,000)

c. Umbrella or Excess Liability: Umbrella or Excess Liability shall be provided in excess of the primary liability limits referenced above. The minimum umbrella or excess liability coverage shall be Three Million Dollars (\$3,000,000). The coverage amounts for underlying insurance and umbrella or excess liability insurance may be met by a combination of underlying and umbrella policies so long as in combination the limits equal or exceed those stated. The umbrella/excess insurance shall follow the form of the underlying insurance.

The above insurance policies shall also be subject to the following requirements:

- a. **Occurrence Basis** - All insurance shall be written on an occurrence basis.
- b. **Additional Named Insured** - The Town shall be named as an additional named insured on the Commercial General Public Liability Policy, the Comprehensive Automobile Liability Policy and the Umbrella/Excess liability Policy. The Contractor's insurance shall be primary to any insurance the Town may have.
- c. **Certificates of Insurance** - Certificates of Insurance acceptable to the Town shall be addressed to and filed with the Town (the Town Administrator and Director of Public Works) prior to the commencement of work by the Contractor for all insurance required above. The description of each coverage listed on the certificates shall include an appropriate means of identification, referencing the

coverage, including liability limits, required above. Renewal certificate shall be addressed to and filed with the Town at least thirty (30) days prior to the expiration date of required policies.

d. Subcontractors - The Contractor shall require all subcontractors, approved by the Town, file with the Town all insurance certificates required to be filed by the Contractor or otherwise be fully covered by the Contractor's insurance.

e. Notice of Cancellation, Amendment or Non-Renewal/Impairment of Aggregate - All Certificates of Insurance shall include a thirty (30) day prior written notice of cancellation, amendment or non-renewal forwarded by registered or certified mail to the Town. This notice of cancellation, amendment and impairment must be reflected in the insurance certificate or in a separate written document/correspondence, reasonably acceptable to the Town, from the insurer or insurance agent of the Contractor.

f. Deductibles - The Contractor shall be responsible for all deductibles.

g. Non-Waiver - The insurance policies required by this Contract shall not be construed to excuse the faithful performance by the Licensee or limit the liability of the Licensee.

k. Failure to Provide/Maintain Insurance - failure to provide and continue in force such insurance as aforesaid shall be deemed a material breach of the contract and shall operate as an immediate termination thereof.

31. Compliance With Law

The Contractor shall comply with all applicable Federal, State, and Town law, by-laws, and rules and regulations, and/or lawful orders and/or decrees, including, but not limited to laws regarding prevailing wages and discrimination, including any subsequent changes and any applicable judicial or administrative interpretation of such laws, by-laws, rules and regulations. The Contractor, and not the Town, shall bear and be responsible for any and all costs that may arise as a result of or are otherwise caused by or related to a change of law, including regulations, . If the Contractor or its agent violates any applicable law or regulation, the Contractor shall bear all costs arising therefrom and defend, indemnify and hold the Town harmless from any and all such costs. If any discrepancy or inconsistency is discovered in the specifications or this Agreement for this work in relation to any such law, bylaw, regulation, order or decree, the Contractor shall forthwith report the same to the Director of Public Works and the Town Administrator in writing. Additionally, the provision most protective of the Town

and/or the public shall apply to the fullest extent not prohibited by law. The Contractor shall obtain and maintain at its cost, all federal, state and local licenses and permits required to perform the services required by this Agreement.

This Agreement shall be deemed and interpreted to include all applicable federal, State and municipal laws, rules and regulations of all authorities having jurisdiction there over.

32. Prevailing Wage/Overtime Wages/Etc

The Contractor shall, to the fullest extent required by law, pay prevailing wages as determined by the Department of Labor of Industries or its successor according to state law, including but not limited to Chapter 149, Section 27F of the General Laws, as amended. The Contractor is responsible for wages, benefits, overtime wages or other labor related costs, expenses or penalties, including as a result of applicable law or the provision of rubbish collection, recycling and/or penalties. The Town shall not have any responsibility to make any such payment, and further the Contractor shall indemnify and hold the Town harmless for all such wages, labor costs, expenses and/or penalties, including but not limited to any determination or judgment related thereto and any attorney fees incurred by the Town in relation thereto or the defense thereof.

The Contractor further agrees that he will pay for all labor performed or furnished, and for all material used or employed, and for the rental or hire of vehicles, power shovel, tools and other appliances and equipment used or employed in the carrying out of this Contract, and shall pay all persons who contract with the principal for labor and materials on account of the work herein contemplated and that he will furnish the Director of Public Works at their request with evidence satisfactory to the Director of Public Works that all persons who have done work or furnished anything under this contract and all claims of private corporation or individuals for damage of any kind caused by the construction of said work have been fully paid or satisfactorily secured and in case such evidence is not furnished the Director of Public Works may cause to be retained out of any amount due the Contractor sums sufficient to cover any such unpaid claims. While it is understood that the security required to be given by the Contractor to satisfy the condition of statutory law is furnished by his giving the bond accompanying this contract, the Town may nevertheless cause any monies retained or to become due to be held and applied to the payments for labor or materials for which security is required under the provisions of law.

33. Payment To Contractor / Credit to Town

The Contractor shall be entitled to the following annual payments as payment for all the services required by this Agreement:

- a. First Year (June 28, 2014 – June 30, 2015) - \$_____
- b. Second Year (July 1, 2015 - June 30, 2016) - \$_____
- c. Third Year (July 1, 2016 - June 30, 2017) - \$_____

The contract price for refuse/recycling includes all diesel fuel costs incurred by the Contractor to provide the contracted services. At the end of each month the Contractor shall provide a detailed report of gallons used for the contracted services and the actual cost incurred to purchase the fuel. Such report shall be subject to review by the Town and shall be corrected if there are errors in the data reported. If the market price of diesel fuel exceeds \$5.00 per gallon [based on the average price of diesel fuel for the 3 closest stations to Stoneham Town Hall as determined by Town] the contractor may request an upward adjustment to the monthly contractual payment, based on the amount by which the Contractor's actual diesel fuel cost per gallon exceeds \$5.00 multiplied by the number of gallons used. In no event shall such adjustment be made for any fuel usage that exceeds 1500 gallons in any month. If the market price of fuel falls below \$3.50 per gallon, the Town may make a downward adjustment to the monthly contractual payment, based on the amount by which the Contractor's actual diesel fuel cost per gallon is less than \$3.00 multiplied by the number of gallons used. In no event shall such adjustment be made for any fuel usage that exceeds 1500 gallons in any month.

There shall then be one two (2) year (less two days) option period (July 1, 2017 - June 28, 2019.) The option period shall be at the Town's sole discretion as to whether to exercise the option, and no exercise of the option period shall be subject to agreement or acceptance by the Contractor. If the option period (both option years) is exercised by the annual payments for all services shall be as follows:

- d. Fourth Year (July 1, 2017 - June 30, 2018) - \$_____
- e. Fifth Year (July 1, 2018 - June 30, 2019) - \$_____

The Town, by and through its Town Administrator shall attempt to give the Contractor a minimum ninety (90) days' written notice as to whether it will exercising said Option Period. If the Town does not

provide said written notice or the Contractor does not, for any reason, receive said written notice, the Contractor shall provide written notice to the Town that such notice regarding the Option Period (regarding whether or not the Town is exercising said Option Period) has not been received by the Contractor. Upon receipt of said written notice by the Contractor, the Town shall in a timely manner, by and through its Town Administrator provide the Contractor with notice of the Town's intent with respect to the Option Period.

As to the option years, the contract price for refuse/recycling includes again all diesel fuel costs incurred by the Contractor to provide the contracted services. At the end of each month the Contractor shall provide a detailed report of gallons used for the contracted services and the actual cost incurred to purchase the fuel. Such report shall be subject to review by the Town and shall be corrected if there are errors in the data reported. If the market price of diesel fuel exceeds \$5.00 per gallon [based on the average price of diesel fuel for the 3 closest stations to Stoneham Town Hall as determined by Town] the contractor may request an upward adjustment to the monthly contractual payment, based on the amount by which the Contractor's actual diesel fuel cost per gallon exceeds \$5.00 multiplied by the number of gallons used. In no event shall such adjustment be made for any fuel usage that exceeds 1500 gallons in any month. If the market price of fuel falls below \$3.50 per gallon, the Town may make a downward adjustment to the monthly contractual payment, based on the amount by which the Contractor's actual diesel fuel cost per gallon is less than \$3.00 multiplied by the number of gallons used. In no event shall such adjustment be made for any fuel usage that exceeds 1500 gallons in any month.

Applicable throughout the term of the Agreement - presently approximately 7,000 Stoneham dwelling units which have Town refuse and recycling services. There is a potential for approximately 1,200 more condominiums based solely on whether the Town's trash fee continues and/or the amount of the trash fee. Given the Town's anticipate growth rate and current outlook with respect to residential growth, the number of residential dwelling units (not including rental dwelling units) is not anticipated to materially increase, although there is no certainty as to the future. If at any time there are greater than five hundred (500) additional dwelling units (greater than a total of 7,500 dwelling units) for which the Contractor shall be responsible for refuse and recycling services pursuant hereto if so directed in writing by the Town, the parties shall negotiate, in good faith, an equitable payment adjustment(s) for the number of dwelling units above 7,500 dwelling units.

Notwithstanding any other provision this Section 33 of this Agreement or elsewhere in this Agreement, this Agreement shall be subject to **annual appropriation** by the Town, without which this Agreement shall not be in force or effect with respect to the Town's obligations going forward therefrom, including any payment(s) to the Contractor.

34. Invoices and Payments

The Contractor shall be entitled to payments to be made in the following manner:

- a. **Invoices** - Each monthly invoice shall be for one twelfth (1/12) of the annual contract price, subject to deductions and claims by the Town for failure to perform. Said monthly invoice shall be rendered on or before the fifteenth (15th) day of each month for the preceding month.
- b. **Payment** - Payment by the Town to the Contractor subject to deductions and claims set forth in (c) below, shall be made within thirty (30) days from the date of receipt of invoice.
- c. **Deductions and Claims** - The Town shall not be required to pay or honor any amount covering services rendered which the Town is disputing, including any damages therefor. The Town shall not, however, withhold any sums due the Contractor hereunder for services rendered which are not in dispute, except that the Town may withhold payment of any amount equal to (i) an amount due to services rendered in dispute plus (ii) any additional damage, on account of the Contractor's failure to perform. In addition to the withholding payments as set forth herein, the Town shall be entitled to any other remedy at law or in equity to protect its interests.
- d. **Method of Computation** - A route-day payment shall be computed by dividing the per annum charge by the number of collection days per year. The route-day payment shall be used in computing the amount to be paid the Contractor in event of his failure to make scheduled collections and transports.
- e. **No Charge To Residents By Contractor** - Neither the Contractor nor any of its employees or agents shall make any charge to any resident for the collection, recycling and/or transport of waste subject to collection pursuant to this Agreement, except the charge for curbside collection of white goods pursuant to Section 17(i) above, and the collections (waste or recycling) to a condominium

in excess of that required by this Agreement may be charged to the respective condominium or its respective residents) and condominiums may be charged for containers and carts.

35. Contract Administration

The Public Works Director, under the direction and supervision of the Town Administrator, shall administer the provisions of this Agreement. The collection schedule, the method of collecting and the disposal of material collected must all be in a manner satisfactory to the Director. Decisions of the Public Works Director, under the direction and supervision of the Town Administrator, shall be final and a condition precedent to the right of the Contractor to receive payment under this Agreement.

36. Books and Records

The Contractor shall keep daily records of waste collected and transported, and the Town shall have the right to inspect the same at all reasonable times. The records shall show the type (residential and/or municipal), weight, and volume of solid waste collected and transported, and the Contractor shall submit invoice receipts received from Covanta Haverhill Associates (or its successor as the disposal site contractor) on a daily basis for waste delivered under this Agreement. The Contractor shall submit a proposed record and accounting system for approval by the Town.

37. Right To Require Performance

The failure of the Town at any time to require performance by the Contractor of any provisions hereof shall in no way affect the right of the Town thereafter to enforce the same. Nor shall waiver by the Town of any breach of any provisions hereof be taken or held to be a waiver of any succeeding breach of such provisions or as a waiver of any provision itself.

38. Liquidated Damages

In addition to the rights contained in this Agreement, the Town shall be entitled to assess liquidated damages against the Contractor for its failure to perform the following specified obligations for collection and transport of waste pursuant to this Agreement. The Contractor acknowledges and agrees that the liquidated damages provided herein are not penalties. The Town shall have the right to withhold the amount of liquidated damages assessed by it from any payment owed to the Contractor as a

credit or set-off of such amount. The payment of liquidated damages does not create a waiver of the Town's right to be indemnified, held harmless or insured by the Contractor for any breach of this Agreement or negligence by the Contractor. The liquidated damages shall be as follows:

- | | | |
|----|--|----------------------|
| a. | Failure to immediately pickup waste spilled during collection | \$250 per occurrence |
| b. | Failure to promptly pickup waste spilled during haul in Stoneham or elsewhere | \$250 per occurrence |
| c. | Willful mishandling of waste barrels / receptacles . | \$250 per occurrence |
| d. | Failure to place waste barrels in an upright position at approximately the same location upon emptying | \$250 per occurrence |
| e. | Following notice of complaint, failure to collect waste from a specific location on the same day as the regular Collection Route or by 9 a.m. of the following day if authorized by the Director | \$250 per occurrence |
| f. | Failure to collect waste from five (5) for more adjoining locations on the same day as the regular Collection Route or by 9 a.m. of the following day if so authorized by the Director | \$500 per day |
| g. | Continued violation of traffic laws, bylaws or regulations during collection and transport, after written notice to correct by the Director | \$250 per day |
| h. | Failure without good cause to finish any single Collection Route by 7 p.m. | \$500 per day |
| i. | Use of unmarked collection vehicles | \$500 per occurrence |
| j. | Disposal of recyclables with refuse | \$250 per day |

39. Interests or Claims By Others Not Valid

No person or entity, other than the signer of this Agreement as Contractor, has any interest hereunder and no claim by such person or entity shall be made or by valid against the Town.

40. Certificate of Compliance With Tax Law and Non-Collusion

The Contractor's Certification of Compliance with Tax Law and Non-Collusion are attached hereto as Appendix A-1 and A-2.

41. Audit, Inspection, Record Keeping

a. At any time during normal business hours, and as often as the Town may deem necessary, there shall be made available to the Town for the purpose of audit, examination and/or to make excerpts or transcripts, all records, contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement.

b. For a period of six (6) years after final payment of this Contract or any extension thereof, the Contractor shall make its work papers, records and other evidence of audit available to the Town or its duly authorized representatives. The Town shall be entitled to reproduce any or all such documents at its own expense, for which provision shall be made at the time the need for reproduction arises.

42. Notice

Any notice, demand, approval, proposal, protest, direction or request provided for in this Agreement to be delivered, given or made shall be in writing, shall be delivered by hand with proof of service, overnight mail or courier service, or mailed by registered or certified mail, postage prepaid, return receipt requested and address as follows:

Contractor: _____
Town: David Ragucci
Town Administrator
Stoneham Town Hall
35 Central Street
Stoneham, MA 02180

43. Claims and Disputes

All claims, disputes and other matter in questions between the parties, arising out of or in relating to this Contract or an alleged breach thereof, shall be decided only in the Superior Court of Massachusetts in Middlesex County, Woburn, Massachusetts, unless otherwise agreed upon by the Contractor and the Town, set forth in writing and signed both by both parties.

44. Amendment Waiver Procedure

Changes to any of the provisions specified in this Contract may occur only when mutually agreed upon by the Contractor and the Town, set forth in writing and signed both by the Contractor and the Town. All conditions, covenants duties and obligations contained in this Contract may be waived only by written agreement by the parties. Forbearance or indulgence in any form or manner by the Town shall not be construed as a waiver, nor in any manner limit the legal or equitable remedies available to the Town. No waiver by the Town of any default or breach shall constitute a waiver of any subsequent default or breach by the Contractor.

45. Contractor's Certifications

The Contractor hereby represents and certifies under the **pains and penalties of perjury** as follows:

- a. Organization - The Contractor is a duly organized and legally existing entity and is qualified to do business and is in good standing in the Commonwealth of Massachusetts, with full power and authority to execute and perform this Contract.
- b. Authority - This Contract has been duly executed by an authorized party.

46. Severability

If any section, paragraph, clause or provision of this Agreement shall be finally adjudicated by a court of competent jurisdiction to be invalid, the remainder of this Agreement shall be unaffected by such adjudication and all of the remainder of this Agreement shall be unaffected by such adjudication and all of the remaining provisions of this Agreement shall remain in full force and effect as though such section, paragraph, clause or provision, or any part thereof so adjudicated to be invalid, had not been included herein, unless such remaining provisions., standing alone, are incomplete and incapable of being executed in accordance with the intent of the parties to this Agreement.

47. Force Majeure

If by reason of force majeure either party is unable in whole or in part to carry out its obligations hereunder, said party shall not be deemed in violation or default during the continuance of such inability.

The term "force majeure" as used herein shall mean the following: acts of God; acts of public enemies; orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, political subdivision, or officials, or any civil or military authority; insurrections; riots; epidemics; landslides; lightening; earthquakes; fires; hurricanes; volcanic activity; storms; floods; washouts; droughts; civil disturbances; explosions; strikes; and unavailability of essential equipment, services and/or materials and/or other matters beyond the reasonable control of the party, provided the party takes immediate and diligent steps to comply as soon as possible under the circumstance with the Agreement without endangering the health or safety of the Contractor's employees or property, or the health or safety of the residents or employees of the Town or the public, or their property. In the event that any such delay in performance or failure to perform affects only part of the party's capacity to perform, the party shall perform to the maximum extent it is able to do so in as expeditious a manner as possible. The party claiming force majeure shall notify the other party in writing of the occurrence of an event covered by this Section within three (3) business days of the date upon which the party learns of its occurrence.

48. Headings

The Paragraph and Sub-paragraph headings in this Agreement are for convenience and reference only and in no way define or limit the scope or content of this Agreement or in any way affect its provisions.

49. Entire and Complete Agreement / Modifications

This Agreement constitutes the entire and complete agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements, and may be amended only by a writing executed by both parties.

50. Contract Counterparts

This Agreement may be signed in more than one identical counterpart, each of which shall be deemed to be an original.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed this ____ day of June, 2014.

CONTRACTOR

TOWN OF STONEHAM

David A. Ragucci
Town Administrator

Certification as to funding

Ronald J. Florino
Town Accountant

Approved as to legal form:

Town Counsel